

## Rural Utilities Service, USDA

## § 1738.13

(d) Loans will only be made under this part if the applicant's financial operations, taking into account the impact of the facilities financed with the proceeds of the loan and the associated debt, are economically feasible, as determined by RUS.

[68 FR 4867, Jan. 30, 2003; 68 FR 8989, Feb. 27, 2003]

### § 1738.11 Availability of broadband service.

(a) As provided in § 1738.15 of this part, priority will be given to loans to finance service to eligible rural communities in which broadband service is not available to residential customers in the applicant's proposed service area.

(b) RUS shall consider the following criteria in determining whether broadband service is not available to residential customers:

(1) Broadband service is not being provided to residential customers in the applicant's proposed service area and no entity is committed to provide such service before the service would reasonably be expected to be available pursuant to the loan application;

(2) Broadband service is not provided at rates comparable to those of similar services in neighboring urban and suburban areas, as determined by RUS; and

(3) The quality of existing service, including, but not limited to, the availability of specified data rates, system latency, and data rate restrictions, is not satisfactory as determined by RUS.

(c) All applicants, as part of submitting a completed application, shall:

(1) Certify to RUS the extent to which paragraphs (b)(1) through (b)(3) of this section, apply to residential customers in the proposed service area, and

(2) Publish legal notice stating the applicant's intent to offer broadband service in a particular community.

(i) The notice must set forth the applicant's proposed service area, and request any incumbent broadband service provider to submit to RUS within 30 days:

(A) The number of residential customers receiving broadband service in the applicant's proposed service area, the rates of data transmission, and the

cost of each level of service, or proof of commitment to provide service in the proposed service area, and

(B) A map of its service territory.

(ii) The notice must satisfy all other requirements to constitute legal notice within the areas proposed to be served.

(iii) The notice must be published in state and local newspapers covering the applicant's proposed service area if such publication is not included in the legal notice requirement.

### § 1738.12 Location of facilities.

RUS will make broadband loans for facilities which RUS determines are necessary to serve subscribers located in eligible rural communities. RUS may determine that it is necessary for facilities financed with loan funds to be located outside of eligible rural communities.

### § 1738.13 Allocation of funds.

(a) On October 1, of each fiscal year, or as soon as possible after funds become available, RUS will:

(1) Establish a national reserve for broadband loans, and

(2) Allocate amounts in the reserve to each State, territory, and insular possession, based on the ratio of the number of communities with a population of 2,500 inhabitants or less in the state, territory, and insular possession to the number of communities with a population of 2,500 inhabitants or less in all states, territories, and insular possessions. Population will be based upon the Bureau of the Census' latest decennial census.

(b) To be considered eligible for funding from the State reserve during the fiscal year, an application, determined by RUS to be complete, must be postmarked no later than January 31 of the fiscal year.

(c) On April 1 of each fiscal year, RUS will return all unobligated amounts in each state's reserve to the national reserve and will make the national reserve available to eligible entities in any state.

(d) To be considered eligible for funding from the national reserve during the current fiscal year, a completed application, satisfactory to RUS, must be postmarked no later than July 31 of the fiscal year.

#### § 1738.14

(e) Completed applications that are economically and technically feasible, as determined by RUS, will be considered for funding in accordance with the priority requirements set forth in § 1738.15 of this part.

#### **§ 1738.14 One-time priority for unfunded applications from the broadband pilot program.**

(a) Each application that was submitted and remains unfunded from the broadband pilot program will be given a one-time priority for funding for a loan under this part.

(b) Each applicant will be given 30 days from the date of publication of this part in the FEDERAL REGISTER to resubmit a completed application in accordance with the provisions of this part.

(c) Completed applications submitted within the 30-day time-frame will be considered for financing:

(1) First, where broadband service is not available to residential customers, as set forth in § 1738.11 of this part.

(i) Completed applications will be funded on a first-in, first-out basis, as long as funds remain available in the applicable state's reserve.

(ii) When the state reserve is not adequate to fund the next completed application on a first-in, first-out basis, RUS will consider subsequent completed applications for that state for funding on a first-in, first-out basis. All unfunded, completed applications will be carried forward for consideration for funding from the national reserve.

(2) Second, where broadband service is available to residential customers:

(i) On January 1, 2003, after all new applications submitted under this part proposing to provide service where none is available have been considered under § 1738.15(b) of this part, all completed applications will be considered for funding on a first-in, first-out basis, as long as funds remain available in the applicable state's reserve.

(ii) When the state reserve is not adequate to fund the next completed application on a first-in, first-out basis, RUS will consider subsequent completed applications for that state for funding on a first-in, first-out basis. All unfunded, completed applications

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will be carried forward for consideration for funding from the national reserve.

#### **§ 1738.15 Priorities.**

Subject to the one-time priority set forth in § 1738.14 of this part, in making loans under this part, priority will be given to eligible entities submitting completed applications for the construction, improvement, or acquisition of facilities and equipment for broadband service in eligible rural communities as follows:

(a) As of October 1 of the fiscal year, completed applications remaining unfunded from the previous fiscal year where broadband service is not available to residential customers, as set forth in § 1738.11(b)(1) of this part, will be considered for funding on a first-in, first-out basis, as long as funds remain available in the applicable state's reserve. When the state reserve is not adequate to fund the next completed application on a first-in, first-out basis, RUS will consider subsequent completed applications for that state for funding on a first-in, first-out basis. All unfunded, completed applications will be carried forward for consideration for funding from the national reserve.

(b) New completed applications proposing to provide service where none is available to residential customers, as set forth in § 1738.11 of this part, will be considered for funding, from the state reserve prior to April 1 and the national reserve after April 1, on a first-in, first-out basis, as long as funds remain available. As applications are processed using the first-in, first-out process, RUS may expedite for consideration for funding applications proposing to provide service where none is available, as set forth in § 1738.11(b)(1). When funds are not adequate to fund the next completed application on a first-in, first-out basis, RUS will consider subsequent completed applications for funding on a first-in, first-out basis.

(c) On January 1, March 30, April 1, July 1 and September 30 of the fiscal year, all unfunded, completed applications on hand will be prioritized and considered for funding, from the state